

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.898 OF 2025

**SATISH
RAMCHANDRA
SANGAR**

Digitally signed by
SATISH RAMCHANDRA
SANGAR

Date: 2025.08.20
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1. **Arjun Arun Sonawane**
Age : 35 Years, Occupation : Service,
Residing at : Room No.1, Chawl No.9,
Ekveera Nagar, Vasundri Road, Near
Datta Mandir, Manda, Titwala (West),
Thane – 421 605.
2. **Amit Suresh Solanki**
Age : 35 Years, Occupation : Service,
Residing at : C/17, Municipal Building,
Near Lions Garden, Kurla, Mumbai :
400070.

...Applicants

Versus

The State of Maharashtra
(At the instance of Dharavi Police
Station vide C.R. No.317 of 2007).

...Respondent

Mr.N.N.Gawankar (Through V.C.) a/w Mr.Shreyas N. Gawankar:-	Advocates for Applicants.
Ms.Gauri S. Rao:-	APP for Respondent – State.

CORAM : S. M. MODAK, J.
DATE : 19th AUGUST 2025

P.C. :-

1. Heard learned Advocate Shri.Gawankar for the Applicants and
learned APP.

2. The trial Court Judge has heard the final arguments and closed the case for judgment. He could not pronounce the judgment. He was transferred. New Judge who presided over that case abruptly on 24th July 2025 issued summons to the witness Nos.4 to 12. This act on the part of the Judicial Magistrate First Class, 12th Court, Bandra is under challenge at the instance of the Applicants / Accused.

3. When I heard both of them and seen the papers annexed to the Application, I find merit in it. Hence, I am inclined to allow the Application. Hereinafter, I will give reasons.

4. The then Magistrate has framed a charge against the two Applicants for the offences punishable under Sections 420, 465, 468 read with Section 34 of the Indian Penal Code, 1860 (“**IPC**”) on 14th January 2013. The allegation in brief is “*preparing bogus identity card of Election Commission*”. The Applicants have annexed the following documents:-

- (i) Copies of evidence of four prosecution witnesses.
- (ii) Copy of statement under Section 313 of the Code of Criminal Procedure, 1973 (“**Cr.P.C.**”) recorded on 26th April 2024.

No doubt, the copies of Roznama recording “*case is fixed for pronouncing judgment*” is not annexed. But in paragraph No.6 of the

Application, the Applicants have pleaded those facts and stage is pronouncing judgment on 6th May 2025. The judgment is not pronounced and the impugned order is passed on 24th July 2025. So the issue is “whether there can be a direction by the Magistrate to issue summons when the case is fixed for pronouncing the judgment.”

5. If we read the impugned order on Roznama, it is clear the prosecution has not made any request for issuing summons. I say so because it is not reflected in that order. It is relevant to consider the reasoning given by the learned Magistrate. He opined:-

“Allegations are forgery of election of I.D. card and cheating to election commission. Hence witness needs to be examined.”

This Court is not going to decide the necessity of examining the witness Nos.4 to 12. This Court is not going to make any comment on the allegations, witnesses who are already examined, new witnesses – why they were not examined earlier but the **issue is about manner of exercising power to issue directions.**

6. In a criminal trial, the burden is on the prosecution. They have got a right to examine the witnesses within a reasonable time. **At the same time, the Cr.P.C. recognizes the power of Court to summon any person as a witness.** This is a first part of Section 311 of Cr.P.C. This is

optional. But such examination is mandatory when their evidence is essential for just decision of the case.

7. The impugned order on Roznama nowhere reflects the satisfaction arrived at by the learned Magistrate to summon these witnesses. A fair trial also implies giving of an opportunity to all the concerned parties of being heard. **This principle is also breached.** Except Roznama, there is no separate order passed by the learned Magistrate which is brought to my notice and if the learned Magistrate has passed an unreasoned order merely on Roznama, it cannot be sustained in the eyes of law. **This is nothing but arbitrary exercise of power.** Under that Section, certainly there is no dispute about *suo motu* exercise of power. Under these circumstances, **the order needs to be set aside.** The learned Magistrate may re-look to this issue. Hence the order:-

ORDER

- (i) The order dated 24th July 2025 passed by the Judicial Magistrate First Class, 12th Court, Bandra – Mumbai in Criminal Case No.466/ PW/2008 **is set aside.**
- (ii) The learned Magistrate is at liberty to re-look to the issue of examining new witnesses particularly when case is fixed for judgment.

- (iii) If the learned Magistrate feels it necessary, he is directed to:-
 - (a) hear the prosecution,
 - (b) the accused
 - (c) and also consider the record from the perspective as to whether the summonses issued to those witnesses, whether they are served and also consider whether the prosecution has closed the evidence.
 - (iv) The learned Magistrate to take the decision as per law.
8. With these observations, **the Application is disposed of.**

[S. M. MODAK, J.]